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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,070	03/12/2004	Raymond R. Neiser	0100352.0516514	2258

7590 07/30/2008
FROST BROWN TODD LLC
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EXAMINER

BIDWELL, JAMES R

ART UNIT	PAPER NUMBER
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3651

MAIL DATE	DELIVERY MODE
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07/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/800,070	Applicant(s) NEISER ET AL.	
	Examiner James R. Bidwell	Art Unit 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-174 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 and 54-173 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-21, 23-32, 35-48, 50, 51, 53 and 174 is/are rejected.
- 7) ☒ Claim(s) 22, 33, 34, 49 and 52 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-21, 23-32, 35-48, 50, 51, 53 and 174 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelsey (U.S. Patent 5,967,289) in view of Piron (U.S. Patent 6,419,073).

Kelsey shows a sortation conveyor having a plurality of switches 42, a plurality of divert guide paths 36 disposed downstream of switches 42 and each guide path has an entrance disposed at an angle of no more than about 20 degrees, see column 3, lines 52-54. Given the "no more than" language it is inherently obvious that angles less than 20 degrees are contemplated by Kelsey. Kelsey also shows laterally diverting articles. Not shown by Kelsey is the divert guide path as having an arcuate portion. However, shown by Piron in Figure 1 is a switch 21 followed by an arcuate guide portion 22. To include such an arcuate portion on Kelsey would have been an obvious engineering expediency to one of ordinary skill in the art as it would provide the predictable result of an arcuate transition that would provide for a smoother divert of articles.

Re claims 14-19, since Kelsey teaches an angle of no more than 20 degrees it is clear to one of ordinary skill in the art that it would be an obvious engineering expediency to try angles less than 20 degrees.

Re claim 20, the entrance path 36 is immediately downstream of switch 42.

Re claim 21, Piron shows a linear portion in track 22 downstream of the arcuate portion.

Re claim 23, Figure 9 of Kelsey shows a linear section just after the divert switch.

Re claim 24, as per claim 21 rejection.

Re claims 25-31, Kelsey teachings would apply to either a linear or arcuate portion.

Re claim 32, the linear portion is the entrance.

Re claims 35 and 36, the angle 37 shown in Figure 7 is constant so it would be the same at the entrance and exit.

Re claim 37, an initial contact zone would be disposed as claimed as per above.

Re claims 38-43, as per rejection of claims 14-19.

Re claim 44, Figure 7 shows an initial linear contact zone.

Re claim 45, all of the contact zone is linear.

Re claims 46-48, 50 and 51, Piron teaches the non-linear arcuate contact zone which is parabolic in nature.

Re claim 53, the non-linear portion would be downstream of the linear portion as shown by Piron.

Re claim 174, the teachings of Kelsey lend one of ordinary skill in the art to the engineering conclusion that it would be obvious to try lesser angles to obtain the expected and desired results.

Claims 22, 33, 34, 49 and 52 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's arguments filed 3/28/2008 have been fully considered but they are not persuasive. The addition of "laterally" to claim 13 in way overcomes the rejection as lateral diverting is clearly taught in the prior art. The pusher in claim 37 when contacted is in an initial contact zone and at least one or more is contacted there. The affidavit arguing commercial success is not found persuasive the making and selling of a product even if successful does not overcome what is shown and taught in the prior art.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Bidwell whose telephone number is (571)272-6910.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford, can be reached on 571-272-6910. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/James R Bidwell/

Primary Examiner, Art Unit 3651

07/25/2008